IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

CRL.A.No. 9 of 2003()

SC.221/2000 of ADDL. SESSIONS COURT (ADHOC), KOZHIKODE
.....

APPELLANT: ACCUSED

SAJUMON ANTONY S/O. ANTONY,
KANDATHIL HOUSE, VILANGAD DESOM, VADAKARA TALUK,
KOZHIKODE DISTRICT.

BY ADV. SRI.P.J.MATHEW
SRI.THOMAS JOHN AMBOOKEN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CRL.M.P.NO.85/2003 IN CRL.A.NO.9/2003

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

24/09/2007

\\TRUE COPY//

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.9/2003-A

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 24th day of September, 2007

J U D G M E N T

The appellant is the accused in S.C.No.221/2000 in the file of the Additional District and Session Judge, Fast Tract Court (Adhoc-II), Kozhikode, with respect to the offence under Section 55(a) of the Abkari Act and Rule 9 of the Foreign Liquor Rules. He stands convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,00,000/- and in default to undergo simple imprisonment for six months.

2. The prosecution case is that on 15/01/1998 at 11 a.m the accused was found transporting 20 bottles of 375 ml King George Special Grape Brandy and two bottles of 750 ml. Gilbeys Green Label Rich Blended Whisky in a bus bearing Registration No.KL 11/D 464 from Mahe to Kerala through the National Highway in front of Azhiyoor Excise Check Post in Azhiyoor.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 7, Exts.P1 to P10 and MOs.1 to 3.

4. PWs.1 and 2 are the Excise Officials, that is, Excise Inspector and the Preventive Officer respectively, who recovered the contraband from the bus by name Jaya Prince, plying in Thalassery-Kozhikode route. It is the evidence of the above witnesses that they saw the accused sitting on the right side of the second seat from the back of the bus keeping a rexin bag in between his legs. On examination of the contents of the bag in the presence of PWs.3 and 4, the conductor and driver of the bus respectively, it was found that the bag contained 20 bottles of 375 ml King George Special Brandy and two bottles of 750 ml Gilbeys Green Label Rich Blended Whisky. Two samples were taken and the accused was arrested. PW.1 has also seized Ext.P3 bus ticket for a fare of Rs.13.80. The evidence of PW.1 is corroborated with the version of PW.2 the Preventive Officer. PWs.3 and 4 the Conductor and Driver of the bus did not support the prosecution and was treated as hostile. PW.5 the Excise Inspector, who conducted the investigation has submitted the forwarding note and got the two samples analysed. Ext.P11 is the chemical analysis report as per which the samples contained 43.01% and 43.11% by volume of ethyl alcohol. PWs.1 and 2 have also proved Ext.P2 seizure mahazar. It is the version of PWs.1 and 2 that one bottle each from 375 ml brandy and 750 ml whisky was opened, tasted and again

sealed and taken as sample. The above witnesses have also identified the material objects produced before the court that included the remaining bottles as well as the rexin bag. PWs.3 and 4 the conductor and driver respectively have admitted their signatures in Ext.P2 mahazar, that is, PW.3 has admitted that the bus was searched and the liquor was seized from the berth of the bus. One passenger was arrested. PWs.3 and 4 were confronted with the case diary statements which were denied by them. PW.6 is the Village Assistant who has prepared Ext.P10 plan of the scene of incident.

5. I find that the evidence of PWs.1 and 2, the excise officials tallies. Nothing has been brought out in the cross-examination of the above witnesses to disprove their version. It was also proved from their evidence that the bus was coming from Mahe towards Kozhikode and it was at the border that the seizure was effected. Hence, Section 55(a) of the Abkari Act is squarely attracted being the possession/transportation was in the course of import as defined in the Abkari Act. Hence, I find that the prosecution has established the case charged beyond reasonable doubt. There is no reason to interfere with the findings of the courts below. The conviction is confirmed.

The counsel for the appellant/accused has pleaded for leniency pointing out that he is working in a workshop and belonged to the poorer strata of the Society. Further, the incident has taken place in 15/01/1998 and about 10 years have elapsed since the commencement of the proceedings. In the circumstances, the sentence is modified to imprisonment till the rising of the court and to pay fine of Rs.1,00,000/- (rupees one lakh) and in default to undergo simple imprisonment for four months. The appellant is granted six months time to remit the fine amount. He shall appear before the Additional District and Sessions Judge Fast Track (Ad hoc-II), Kozhikode, on 03/12/2007 to receive the sentence.

The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
Judge

ms

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.9/2003-A

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

J U D G M E N T

24th September, 2007